

APPEAL NO. 172771
FILED JANUARY 26, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 25, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ determined that, pursuant to agreement of the parties at the CCH, the attorney's fee ordered in Sequence No. 1 dated June 21, 2016, in the amount of \$427.50 is to be paid to the appellant (claimant). The ALJ further determined that the attorney fee orders for the following sequence numbers and dates of service and in the listed amounts have become final by operation of law. The ALJ additionally found that attorney's fees so ordered were reasonable and necessary for services provided by the attorney in prosecution of the claimant's case and are not excessive:

Seq. No.	Dates of Service	Amount Approved	Date of Order
2	06/01/16 – 06/29/16	\$815.00	July 14, 2016
3	07/06/16– 07/26/16	\$1,035.00	February 23, 2017
4	08/08/16 – 08/30/16	\$607.50	February 23, 2017
5	09/01/16 – 09/26/16	\$700.00	February 23, 2017
6	10/10/16 – 10/28/16	\$662.50	February 23, 2017
7	11/08/16 – 11/30/16	\$630.00	February 23, 2017
8	12/02/16 – 12/29/16	\$1,157.50	February 23, 2017
9	01/03/17 – 01/04/17	\$412.50	February 23, 2017
10	01/03/17 – 01/31/17	\$1,980.00	February 23, 2017
11	02/03/17 – 02/21/17	\$777.50	February 23, 2017

The claimant appealed the ALJ's attorney fee determination contending that he did not receive any benefit from the attorney's services. The claimant also argues that he did not receive copies of the fee orders issued by the Texas Department of Insurance, Division of Workers' Compensation (Division). Respondent 1 (attorney) responded, urging affirmance. The appeal file contains no response from respondent 2 (carrier).

The ALJ's determination that the attorney's fee in the amount of \$427.50 ordered by the Division in Sequence No. 1 dated June 21, 2016, is to be paid to the claimant as agreed to by the parties was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

We note the ALJ incorrectly referenced the attorney's law firm as Spencer Spencer, PLLC rather than Spencer, Anderson, PLLC. We reform the references in the decision to reflect the attorney's correct law firm: Spencer, Anderson, PLLC.

We further note that in the Evidence Presented section of the Decision and Order, the ALJ incorrectly stated that (injured employee) testified for the claimant when, in fact, the witness was (injured employee), the claimant. The ALJ further listed the witness for the attorney as Spencer Spencer when, in fact, the witness was Jason C. Spencer, the attorney.

The Division Order for Attorney's Fees, Sequence No. 2 dated July 14, 2016, approved 4.35 hours of attorney's fees at \$150.00 an hour and 3.25 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$815.00.

The Division Order for Attorney's Fees, Sequence No. 3 dated February 23, 2017, approved 6.20 hours of attorney's fees at \$150.00 an hour and 2.10 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$1,035.00.

The Division Order for Attorney's Fees, Sequence No. 4 dated February 23, 2017, approved 3.60 hours of attorney's fees at \$150.00 an hour and 1.35 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$607.50.

The Division Order for Attorney's Fees, Sequence No. 5 dated February 23, 2017, approved 3.50 hours of attorney's fees at \$150.00 an hour and 3.50 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$700.00.

The Division Order for Attorney's Fees, Sequence No. 6 dated February 23, 2017, approved 3.75 hours of attorney's fees at \$150.00 an hour and 2.00 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$662.50.

The Division Order for Attorney's Fees, Sequence No. 7 dated February 23, 2017, approved 3.75 hours of attorney's fees at \$150.00 an hour and 1.35 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$630.00.

The Division Order for Attorney's Fees, Sequence No. 8 dated February 23, 2017, approved 6.70 hours of attorney's fees at \$150.00 an hour and 3.05 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$1,157.50.

The Division Order for Attorney's Fees, Sequence No. 9 dated February 23, 2017, approved 2.75 hours of attorney's fees at \$150.00 an hour for a total attorney fee order of \$412.50.

The Division Order for Attorney's Fees, Sequence No. 10 dated February 23, 2017, approved 12.45 hours of attorney's fees at \$150.00 an hour and 2.25 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$1,980.00.

The Division Order for Attorney's Fees, Sequence No. 11 dated February 23, 2017, approved 4.85 hours of attorney's fees at \$150.00 an hour and 1.00 hour of legal assistant's fees at \$50.00 an hour for a total attorney fee order of \$777.50.

We note that all of the fees requested and approved in Sequence Nos. 2 through 9 were for services performed from June 1, 2016, to January 4, 2017, prior to the effective date of the amended 28 TEX. ADMIN. CODE § 152.4(d) (Rule 152.4(d)) which established an increase in the maximum hourly rate for legal services for workers' compensation disputes in Texas to \$200.00 for attorneys and \$65.00 for legal assistants. We note further that of the fees requested and approved in Sequence No. 10 for services performed from January 3, 2017, to January 31, 2017, only .25 hours of legal assistant time was for services rendered subsequent to the effective date of the amended Rule 152.4(d). All of the fees requested and approved in Sequence No. 11 were for services performed from February 3, 2017, to February 21, 2017, subsequent to the effective date of the amended Rule 152.4(d). The ALJ made findings of fact that a reasonable hourly rate is \$150.00 for the attorney in this matter and \$50.00 for legal assistant time and also that a reasonable hourly rate is \$200.00 for the attorney in this matter and \$65.00 for legal assistant time. We note, however, that in each sequence at issue, attorney's fees were requested and ordered at the hourly rate of \$150.00 and legal assistant time was requested and ordered at the hourly rate of \$50.00.

FINDING OF FACT NO. 11

In Finding of Fact No. 11, the ALJ found that by order dated February 23, 2017, in Sequence No. 4, the Division approved an attorney's fee in the amount of \$607.50, which fee included 3.50 hours of attorney time and 3.50 hours of legal assistant time. We note, however, that the fee ordered in Sequence No. 4 actually included 3.60 hours of attorney time and 1.35 hours of legal assistant time. We reform Finding of Fact No. 11 as follows:

11. By order dated February 23, 2017, in Sequence No. 4, the Division approved an attorney's fee in the amount of \$607.50, which fee included 3.60 hours of attorney time and 1.35 hours of legal assistant time.

FINDING OF FACT NO. 12

In Finding of Fact No. 12, the ALJ found that by order dated February 23, 2017, in Sequence No. 5, the Division approved an attorney's fee in the amount of \$700.00, which fee included 4.85 hours of attorney time and 1.10 hours of legal assistant time. We note, however, that the fee ordered in Sequence No. 5 actually included 3.50 hours of attorney time and 3.50 hours of legal assistant time. We reform Finding of Fact No. 12 as follows:

12. By order dated February 23, 2017, in Sequence No. 5, the Division approved an attorney's fee in the amount of \$700.00, which fee included 3.50 hours of attorney time and 3.50 hours of legal assistant time.

TIMELINESS OF CLAIMANT'S REQUEST FOR CCH

The ALJ made findings of fact that the claimant was deemed to have received the Division Order for Attorney's Fees in Sequence No. 2 dated July 14, 2016, by July 19, 2016, and that the Division Order in Sequence No. 2 was not timely disputed within 15 days following receipt of such order pursuant to Rule 152.3(d) effective prior to January 30, 2017.

The ALJ made additional findings of fact that the claimant was deemed to have received the Division Orders for Attorney's Fees in Sequence Nos. 3 through 11 dated February 23, 2017, by February 28, 2017, and that the Division Orders in Sequence Nos. 3 through 11 were not timely disputed within 20 days following receipt of such orders pursuant to the amended Rule 152.3(d) adopted to be effective January 30, 2017.

Although the ALJ made no finding of fact determining the date the claimant requested a hearing to contest the Division's attorney fee Orders in Sequence Nos. 2 through 11, we note that page 3 of the ALJ's Exhibit 1 admitted into evidence is a letter from the Office of Injured Employee Counsel on behalf of the claimant dated and filed with the Division on March 30, 2017, requesting an expedited CCH in order to dispute attorney fees, including those awarded in Sequence Nos. 2 through 11. Because the claimant contested the Division's attorney fee Order in Sequence No. 2 more than 15 days following its deemed receipt on July 19, 2016, and because the claimant contested the Division's attorney fee Orders in Sequence Nos. 3 through 11 more than 20 days following their deemed receipt on February 28, 2017, we find the ALJ's Conclusion of Law No. 5 and determination that such attorney fee orders became final by operation of law to be supported by the evidence and are affirmed.

We note, however, that in the Decision and Order section of his decision, the ALJ stated: "In addition, [the][c]laimant failed to contest the attorney fees awarded by the Division in Sequence Nos. 2, 3[,] 4, 5, 6, 7, 8, 9, 10, and 11 within fifteen (15) days as provided by Division Rules." Because this portion of the ALJ's Decision and Order does not accurately reflect the provisions of the amended Rule 152.3(d) effective January 30, 2017, we reform the quoted portion of the Decision and Order to read as follows: "In addition, the claimant failed to contest the attorney's fee awarded by the Division in Sequence No. 2 within fifteen (15) days following receipt of such order and the claimant further failed to contest the attorney's fees awarded by the Division in Sequence Nos. 3, 4, 5, 6, 7, 8, 9, 10, and 11 within twenty (20) days as provided by Division Rules."

We agree that the fee orders at issue became final by operation of law because the claimant did not timely request a CCH to contest such fee orders and that the Division is without jurisdiction under the facts of this case to reconsider the issue of attorney's fees for services rendered from June 1, 2016, through February 21, 2017. We accordingly strike that portion of the ALJ's decision that the attorney fee awards were not excessive and that the attorney fee orders in Sequence Nos. 2 through 11 are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR: _____

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge